

(1947) 12 CAL CK 0006
In the Calcutta High Court

Tarak Nath Saha and Others

APPELLANT

Vs

Rajani Kanta Saha and Others

RESPONDENT

Date of Decision : 10-12-1947

Acts Referred:

Limitation Act, 1963 — Article 115, 49, 10

Citation : AIR 1948 Cal 207

Hon'ble Judges : G.N. Das, J

Bench : Division Bench

Judgement

G.N. Das, J.—This appeal is on behalf of the plaintiffs. The admitted facts of the case are that the predecessors in interest of the plaintiffs and the defendants had a joint business which was wound up in 1317 B.S. The accounts were adjusted and a sum of Rs. 3,001-9-0 was found to be the balance due as capital. Out of this sum Rs. 2,500 was deposited with the defendant's predecessor on the conditions set forth in an ekrarnama, dated 18th Magh-1317, marked Ex. 1 in this case. The material term in the ekrarnama with which we are concerned is contained in Clause 4. That clause provides that the sum of Rs. 2,500 would carry interest at the rate of 5 1/4% which would come upto Rs. 131-4-0 per annum. To this sum, the defendant's predecessor was to contribute out of his own pocket a sum of Rs. 118-12-0, making in the aggregate a sum of Rs. 250 which was to be spent in the performance of Durgapujah. The ekrarnama also provides that if the defendants' predecessor, or the defendants are unable to perform the pujah as agreed upon, the parties would divide the sum of Rs. 2,500 amongst themselves in certain proportions.

2. The plaintiffs claimed the sum on the basis of the terms of the ekrarnama on an allegation that the defendants' predecessor refused to perform the pujah in 1330 B.S. and on such refusal plaintiffs 1 to 5 are entitled to recover 5 annas odd ganda share with interest thereon, and plaintiffs 6 to 10 are claiming 4 annas odd ganda share on the aforesaid sum with interest thereon.

3. To these claims a plea of limitation was raised by the contesting defendants.

This plea has found favour with the Courts below. In the lower appellate Court, the plaintiffs relied on Section 10, Limitation Act, and Article 49 or Article 115, Limitation Act. The lower appellate Court, for reasons of its own, has repelled the plaintiffs, contention in this behalf and dismissed the plaintiffs' suit.

4. In this Court, Mr. Roy Choudhury, appearing on behalf of the plaintiffs, has argued that his case is based really on the basis of an express trust and as such Section 10, Limitation Act, applies and there is no limitation barring the plaintiffs' claim.

5. To this argument the answer obviously is that it cannot be said that the sum which was left with the defendants and was to carry interest was held by the defendants' predecessor and on his death by the defendants on express trust. It was really money held on the basis of the ekrarnama and after the defendants predecessor or the defendants failed to perform the obligations imposed by the ekrarnama, the remedy of the plaintiffs was to sue for breach of the covenants contained in that ekrarnama. It seems to me that this is really the basis of the claim in the plaint. If this be so, Section 10, Limitation Act, will have no application and the proper article to apply would be Article 115, Limitation Act. The breach on the allegations in the plaint occurred in 1330 B.S. and the claim to recover the money is barred by limitation.

6. As regards the applicability of Article 120, on which reliance has been placed by Mr. Roy Choudhury appearing on behalf of the appellants, it would, in my opinion, have no application. The article that applies, as I have held above, is Article 115.

7. The result, therefore, is that this appeal fails, and is dismissed, but in the circumstances of the case, I direct the parties to bear their own costs.